

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

FROSTY TREATS, INC., FROSTY TREATS)
OF LOUISVILLE, INC., FROSTY TREATS)
WHOLESALE, INC. AND FROSTY TREATS)
OF ATLANTA, INC.)

Plaintiffs,)

vs.)

Case No. 03-378-CV-W-SOW

SONY COMPUTER ENTERTAINMENT)
AMERICA INC.,)

Defendants.)

DEFENDANT SONY COMPUTER ENTERTAINMENT
AMERICA INC.'S MOTION TO EXCLUDE THE TESTIMONY
AND EXPERT REPORT OF PHILIP JOHNSON

COMES NOW Defendant Sony Computer Entertainment America Inc. ("SCEA"), and hereby moves the court to exclude the testimony, expert report, and all opinions of Plaintiffs' expert Philip Johnson. Mr. Johnson's proposed testimony and evidence are unreliable, inadmissible, and ultimately irrelevant. Under Federal Rules of Evidence 702 and 703 and the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* and its progeny¹ such proposed testimony is unreliable and inadmissible. He should be precluded from testifying and his report should be excluded.

SCEA respectfully requests that the Court exclude the testimony, expert report, and opinions of Mr. Johnson.

¹ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *see also Kuhmo Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *General Elec. Co. v. Joiner*, 522 U.S. 136 (1997).

Dated: October 1, 2003

Respectfully submitted,

/s/ Eric A. Buresh

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, 2003, a true and accurate copy of the above and foregoing **Defendant Sony Computer Entertainment America Inc.'s Motion to Exclude the Testimony and Expert Report of Philip Johnson** was e-filed with the Court using the CM/ECF system which sent notification to all parties entitled to notice, namely:

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